

CHAPTER 10

VIOLATIONS--CAUSES, PREVENTION, AND CORRECTION

A. CAUSES OF VIOLATIONS

1. Based on an analysis of investigations of violations, the Office of the Under Secretary of Defense (Comptroller) has developed the following list of the most frequent causes of violations of the Antideficiency Act:

- Established internal controls and standard operating procedures not followed.
- Inadequate supervisory involvement or oversight.
- Lack of appropriate training.
- Inadequate standard operating procedures and internal controls.

2. As the above list indicates, supervisors of DoD personnel who have responsibility for control and use of DoD funds should ensure that their personnel are provided with proper oversight, support, and necessary training to help prevent violations. The following section discusses specific actions that can be taken to reduce or prevent violations.

B. PREVENTING VIOLATIONS

1. To help prevent violations of the Antideficiency Act, DoD personnel should be knowledgeable of the requirements in this Volume. Supervisors at all levels should provide their employees with the requisite training and experience in the control and use of funds at levels commensurate with their responsibilities. Furthermore, supervisors should perform oversight and validation checks to ensure that established internal controls and standard operating procedures are adequate and are being consistently followed by their employees. Supervisors shall use their internal management control programs as required by DoD Directive 5010.38, "Internal Management Control Programs," to assess periodically the reliability of internal control systems and employee internal management control accountability.

2. One of the most effective ways to prevent violations is to perform regular reviews of the status of funds reports. In this regard, commitments shall not be added to obligations to determine whether a violation has occurred. However, if the amount of commitments and the amount of obligations (undelivered orders, accrued expenditures unpaid, and accrued expenditures paid) exceed the total availability of an allotment, allocation, or appropriation, a violation could occur if all or some of the commitments eventually become valid obligations.

3. The most common types of violations in the Department of Defense can be significantly decreased by proactive measures specifically tailored to address the causes and corrective actions required to prevent their occurrence. DoD personnel with responsibilities for the control and use of funds of the types described below should be aware of these common types of violations and be required to take positive actions to avoid their occurrence.

4. The five types of circumstances that account for most of the violations of the Antideficiency Act in the Department, in order of precedence, are as follows:

- a. Exceeding limits on the use of Operation and Maintenance (O&M) funds for minor construction projects.
- b. Exceeding the fund availability amount in an appropriation or exceeding the amount of an allotment/ suballotment.
- c. Using O&M funds to acquire equipment items that exceed the designated amount for the mandatory use of procurement funds (expense versus investment threshold rule).
- d. Not recording obligating documents in a timely or accurate manner which results in overobligating funds already obligated (because the obligating document was not recorded timely or correctly).
- e. Obligating in advance of funds being provided.

5. To prevent the most common violation (paragraph B.4.a., above), engineering and contracting personnel shall be advised of the provisions of Title 10, United States Code, section 2805, and DoD rules and regulations that cover minor construction projects. Engineering personnel frequently are determined to be responsible for violations involving construction projects exceeding statutory construction limitations and administrative construction limitations placed in engineering regulations. A brief summary of some of the provisions of section 2805 and the DoD rules and regulations follows:

- a. The amount of O&M funds that may be used for a minor construction project is limited by statute. However, from time to time, that limit is increased by the Congress. If the specified limit is exceeded, Military Construction funds are required to be used for the entire project including planning and design. A violation of Title 31, United States Code, section 1341(a)(1)(a), may occur when the limitation is exceeded. The limitation applies for the use of O&M funds for a minor construction project even though there is sufficient obligational authority available in the O&M account (that was charged) at the time the project is authorized and approved.
- b. Engineering and contracting personnel also should be familiar with the statutory limitation, under the provisions of Title 10, United States Code, section 2825, on the maintenance and repair funds that may be used for a family housing unit. That limit may not be exceeded without prior approval by the Congress. When that limit is exceeded for any reason during the

completion of a family housing maintenance and repair project, and the conditions specified in the law for waiver of the statutory limitations have not been met, a violation of Title 31, United States Code, section 1341(a)(1)(a), may occur. However, in FY 1992, the Congress approved after-the-fact notification of increased costs beyond the statutory limit only for the removal of “encountered asbestos” under specific conditions.

c. Construction costs which are misclassified as alternations by engineering personnel may result in a violation of the Antideficiency Act. A potential violation may occur if the amount of the misclassification added to construction costs, if any, exceeds a statutory limitation. For example, an engineering project which has a minor construction cost of \$280,000 plus maintenance and repair costs of \$70,000 could cause a violation of a \$300,000 operation and maintenance minor construction statutory limitation if the maintenance and repair work is later proved to be construction. Likewise, a maintenance and repair project in the amount of \$350,000 could be a potential violation of the Antideficiency Act if the maintenance and repair is determined later to be construction.

6. The second most common violation is exceeding availability of funds (paragraph B.4.b., above). The frequency of this type of overobligation condition is reported to have contributed to the passage of the Antideficiency Act.

a. A violation of the Antideficiency Act has occurred if an obligation or expenditure exceeds the amounts available in an apportionment, a reapportionment, a revolving fund, or an administrative subdivision of funds. All DoD commanders, managers, and personnel should be aware that this type of violation accounts for about one-third of the Antideficiency Act violation cases in the Department.

b. The establishment of a funds control system is essential to ensure that all obligations are properly edited against available funds and authorized, before they are incurred. This process must include the recording of a reservation of available funds for authorized obligations that are not immediately obligated and recorded. The reservation shall be by means of a formal commitment or an informal reservation record of the estimated amount of the obligation, or an estimated obligation that is documented to approximate closely the obligation when incurred and recorded.

c. For example, some of the Military Departments have experienced problems with overobligated reserve component personnel accounts. Funds in these accounts are used to pay reservists for week-end drills, travel, special tours, other training, etc. Reserve component unit commanders--who control a formal administrative subdivision of funds subject to the Antideficiency Act--should budget and reserve against available funds estimated amounts for week-end drills and other scheduled training in advance of the incurrence and recording of these obligations.

7. The third most common type of violation (see paragraph 4.c., above) involves the use of O&M funds to purchase equipment items that should be acquired with procurement funds.

a. The Congress designates an amount above which acquisitions of equipment shall be funded with procurement funds. The amount has been frequently increased in recent fiscal years.

b. The commonly reported scenario involves DoD personnel using operation and maintenance (O&M) funds to purchase a computer system when Other Procurement funds are required. Other procurement funds shall be used whenever a piece of computer equipment becomes an integral part of a computer system or local area network (LAN) unless the total costs of the entire system or LAN is less than the amount designated for use of procurement funds. Additional expense/ investment criteria, as it applies to information technology equipment and software can be found in Chapter 1, Volume 2A, and Chapter 18, Volume 2B of this Regulation.

c. Similar problems also frequently occur when acquiring low dollar value equipment items that are estimated to cost less than the congressionally designated amount for procurement funds but actually cost more than that amount when acquired.

d. A violation of the Antideficiency Act does not automatically occur in these situations (paragraphs B.7a.- B.7.c., above) because, when discovered, the obligation is simply moved from the O&M account to the applicable procurement account. If sufficient funds are available after recording the obligation in the procurement account, including all other known valid obligations and deobligations, a potential violation of the Antideficiency Act has not occurred. However, if sufficient funds are not available to cover the obligation in the procurement account, a potential violation of the Antideficiency Act may have occurred.

e. DoD decision makers, such as program managers, information systems and contracting personnel must be knowledgeable of the expense versus investment rules if this type of violation is to be prevented. Training of program managers and information systems, contracting and comptroller personnel should be focused on this issue. Such training should help to reduce the incorrect application of the expense versus investment rule and the resulting violations of the Antideficiency Act.

8. The fourth most common type of violation (paragraph B.4.d., above) occurs when obligating documents are not recorded in the accounting system in a timely and accurate manner and, as a result, funds subject to the Antideficiency Act are overobligated.

a. When obligations are not recorded, the official records in the accounting systems reflect an inflated (and incorrect) availability of funds. Since those records are used by personnel to certify fund availability for other obligations, a violation can easily occur because the records do not reflect the correct amount of funds available for obligation.

b. To help prevent this type of violation, the comptroller community shall require that all organizations that incur obligations and record obligations maintain strict and absolute positive controls over obligating documents and/or their electronic equivalents to ensure that none are lost or misplaced and are accurately recorded in a timely manner. Such controls include batch totals of transactions and dollar amounts incurred, transmitted, received, processed and recorded.

9. The fifth most common type of violation (paragraph B.4.e., above) is caused when managers obligate funds in advance of their availability.

a. The most common scenario is the use of current year funds to procure goods or services that only are properly funded with subsequent years' appropriations. A violation of the Antideficiency Act occurs when an individual has obligated funds before being authorized and appropriated by the Congress.

b. For example, the signing of a lease for a facility or equipment and agreeing to pay, or simply obligating, for 2 years of lease cost during the first year would constitute an obligation in advance of the availability of the funds for the second year. Similarly, agreeing to pay for, or obligating, a maintenance agreement for equipment for 2 years would constitute a violation of the Antideficiency Act.

c. Signing a contract for a new project or new work effort for which funds are not previously authorized and approved by the Congress would also constitute this type of violation of the Antideficiency Act.

d. To help prevent this type of violation, training programs should include specific focus on the importance of ensuring that funds are authorized and available before obligating the government to contracts for future fiscal years expenses.

10. The Department can make significant progress in the reduction of these common violations through proper education and effective training of personnel and ensuring that adequate internal controls and standing operating procedures are in place and being followed.

a. This volume should be used to communicate the importance of learning about violations to the personnel throughout the Department involved in the stewardship of DoD funds. Other sources on the subject of the Antideficiency Act include the United States Code and opinions and decisions of the Comptroller General.

b. This volume should be used as source material to conduct seminars and workshops targeted to general and specific audiences including program managers, engineers, contracting, information systems, comptroller personnel, commanders, supervisors, and managers.

c. The formal education structure within the Department is another avenue available to educate personnel on the Antideficiency Act. Formal courses can be used to alert personnel to common violations and high-risk business transactions and decisions that can result in a violation. The DoD financial management community sponsors professional development courses that include discussion on Antideficiency Act violations. These courses are located at Syracuse University, at Syracuse, New York, primarily for Army-sponsored personnel; the Naval Post Graduate School, at Monterey, California, primarily for Navy-sponsored personnel; and the Air Force Professional Military Comptroller School at Maxwell AFB, Alabama, primarily for Air Force-sponsored personnel. In addition, the Judge Advocate General School at Charlottesville,

Virginia, includes a fiscal law course in its curriculum. See Chapter 8 of this Volume for a further discussion of training.

11. It is critical that DoD commanders and managers are aware of the Antideficiency Act concepts and the most common causes of violations--see Section A above. The full spectrum of DoD's formal education programs for all military officers, from staff officer courses to executive development classes, should incorporate relevant aspects of this volume for use in highlighting the potential pitfalls and risks associated with the Antideficiency Act.

12. On-the-job training is the responsibility of all supervisors and personnel. Supervisors and managers should incorporate the provisions of this volume in their on the job training programs for those employees responsible for funds administration and for use of funds.

C. NO VIOLATION--ERRONEOUS CHARGING OR RECORDING

1. No violation of the Antideficiency Act is considered to have occurred when an overobligation or overexpenditure is solely the result of not recording available documents or transactions that increase fund availability, recording an erroneous transaction, or recording a transaction erroneously. In each instance, the potential violation status is eliminated by correcting the erroneous transaction, or by posting the omitted transaction. However, such actions should not include the deletion or adjustment of any valid transactions. If after the proper recording of the transactions, an overobligation or expenditure remains, a potential violation of the Antideficiency Act has occurred.

2. A violation of Title 31, United States Code, section 1517, may exist when the amount of authorizations of funds granted to other activities exceeds the amount of funds available under the applicable authorization of funds received. Sometimes errors occur when recording transactions that have the effect of showing more funds in the allotment, operating budget authority, or other administrative subdivision of funds than are actually available. When such errors do occur and the funds are not obligated or expended, there generally is no potential violation. However, the error must be corrected as soon as it is detected. Conversely, errors which require correction by obtaining additional funds in the administrative subdivision of funds cannot eliminate the fact that a violation has, indeed, occurred and must be investigated.

3. An erroneous recording is the recording of an authorization of funds, obligation, commitment, or expenditure in an incorrect fund or account; or the posting of an amount other than the correct amount for the transaction. An erroneous recording may occur by citing the wrong fund, appropriation, subhead, budget project, or allotment/suballotment authorization number on an obligation and/or expenditure document. Examples may also include the recording of duplicate payments or overpayments and/or related obligations. An omission is the failure to post a properly executed authorization of funds (either received or granted), a purchase requisition, commitment, an obligation, or an expenditure, when the document/transaction is available for recording.

4. Once incurred, failure to record valid obligations or expenditures, in the official accounting records will not preclude or avoid a potential violation. All obligations or expenditures shall be recorded accurately and promptly even if the recording results in a negative amount in the accounting records.

5. A potential violation may not exist after an error in the records has been corrected if the following situation exists: Neither obligations nor expenditures incurred exceed the amount of the applicable authorization of funds received at the time of correction and would not have exceeded the applicable authorization of funds received at the time of the initial transaction(s) that are being corrected.

6. A failure to record a valid obligation or expenditure as of the date incurred does not avoid the occurrence of a violation of the Antideficiency Act if the recording results in the account balance or other limitation being exceeded. A potential violation must be reported if this occurs. Obtaining additional funds to cover the violation is required. However, obtaining the additional funds does not eliminate the fact that a violation occurred.

D. CORRECTIVE ACTION

1. Part of an investigating officer's responsibilities includes recommended actions to prevent future violations of a similar type (procedural corrections) and to correct the specific adverse funding condition (funding corrections) that resulted from the violation.

2. The report of violation does not serve to condone, retroactively approve, or financially justify, a violation. All violations must be corrected with the proper funding or the necessary approval from the proper approving authority.

3. Procedural Corrections

a. These corrective actions usually are made by the installation activity causing the violation and may include training or changes in procedures to preclude similar violations. Other activities may also be involved. For instance, it is possible that, as a part of an installation's overall corrective action, a change in local procedures for an organization such as contracting, engineering, information systems, or Defense Accounting Office--which supports the installation--is required. Additionally, changes in practices or procedures by the finance office could provide benefits to the activity that caused the violation. However, unless individuals in the finance office caused the violation, corrective actions taken by that office would be secondary to the corrective actions taken by the responsible organization.

b. Recommendations for future consideration of installation-level corrective actions are not acceptable in the report. The report must state what corrective actions were actually taken and are being taken to preclude similar violations in the future.

c. Recommendations that apply at other installations and organizations should be included in the report and so identified. Such recommendations should be specific and not general in nature. The major command, or equivalent, shall address such recommendations and include a statement whether these recommendations are considered appropriate for adoption by the major command. The Head of the DoD Component, or designee, shall evaluate such recommendations and include a statement whether they are considered appropriated for adoption by the DoD Component.

d. The investigating officer also may make recommendations for improvements in the contents of the Checklists or other portions in this Volume.

e. If recommendations are directed towards changing DoD Component regulations, the recommendation should include the number and name of the regulation, the paragraph which is recommended for change, the recommended wording of the change, and the rationale for the recommended change. A situation in which an investigation determines that a particular regulation caused or contributed to the cause of a violation, the report of violation shall contain a recommendation for changing that portion of the regulation.

4. Funding Corrections

a. The report must state what actions were taken to request the proper funding. Wording in the report to the effect that funds will be requested is not sufficient.

(1) Under Title 31, United States Code, section 1301(a), appropriations shall be applied only to the objects for which the appropriations were made, except as otherwise provided by law. This means that if improper funds were used, the correct funds must be used as provided by law. The funding correction should be made as soon as possible. However, since it may take some time to obtain the proper funds, the report should not be held until the funds are provided. The report shall state what action has been taken to ensure the violation is “financially corrected” and when the funds are expected to be received.

(2) As an example, if O&M funds were improperly used for a minor construction project costing in excess of the limitation for minor construction, the installation must request proper funding to comply with Title 31, United States Code, section 1301(a). The proper funds, in this example, should be requested from the Military Construction appropriation to restore the O&M appropriation to the proper balance. The installation budget office requests the proper funds. Obtaining these funds may take some time to accomplish. Therefore, the report should state what action has been taken to obtain the funds and when the funds are expected to be received.

(3) Care must be taken when correcting financial transactions that involve foreign currency fluctuations budget rates. The appropriate budget rate for the appropriate year must be used.

(a) The appropriation from which the incorrect transaction took place must be corrected as well as the applicable foreign currency fluctuations centrally-managed allotment from which any gain or loss (difference between the current rate actually paid and the budget rate actually obligated) was incorrectly credited or charged. If the appropriation to which the charge must be made is subject to foreign currency fluctuations budget rates, i.e., when an O&M account was charged when a military construction account should have been charged instead, a charge to the appropriation at the applicable budget rate and a charge or credit to the applicable centrally-managed allotment will be required.

(b) Corrections applying to foreign currency fluctuations centrally-managed allotments require coordination with the funds manager of the applicable foreign currency fluctuations centrally-managed allotment at the DoD Component.

b. In some cases, the appropriation that should provide the proper funding to correct a violation may now be closed. Guidance on the treatment of transactions that should have been charged to accounts that are now closed, is being addressed in Volume 3 of this Regulation.

c. In some cases involving violations of departmental or DoD Component administrative limitations, proper funding may not be needed. However, administrative approval after-the-fact from the proper approving authority should be obtained in order to properly document the records associated with the violation.

d. The correction of a violation by means of receipt of the proper funding or the after-the-fact approval does not negate the occurrence of the violation. Violations, even though financially corrected subsequently, must still be properly investigated and reported.